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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)		
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Filing Date: March 17, 2021)	Case No.:	PSH-21-0029
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Issued: June 17, 2021

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXXX (the “Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (“Adjudicative Guidelines”), I conclude that the Individual’s access authorization should be restored.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires possession of a security clearance. In 2019, the Individual was selected to take an employer-provided random Breath Alcohol Test (BAT), and the test results were positive for the presence of alcohol. The DOE Local Security Office (LSO) subsequently requested that the Individual receive a psychiatric evaluation from a DOE-consultant psychologist (“Psychologist”). After the evaluation, the Psychologist issued a report containing her opinion that the Individual met the Diagnostic and Statistical Manual, Fifth Edition (DSM-5), criteria for Alcohol Use Disorder, Mild, in Partial Remission.

In a letter dated June 24, 2020 (“Notification Letter”), the LSO informed the Individual that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility

¹ The regulations define access authorization as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns, the LSO explained that the derogatory information raised a security concern under Guideline G of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual presented the testimony of five witnesses and testified on his own behalf. The LSO presented the testimony of the Psychologist. The Individual submitted seven exhibits, marked Exhibits A through G.² The LSO submitted twelve exhibits, marked Exhibits 1 through 12.³

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for suspending the Individual's security clearance. Ex. 1.

Guideline G provides that “[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. Conditions that could raise a security concern include “[a]lcohol-related incidents away from work, such as driving while under the influence,” “[a]lcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others . . .” and “[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder.” *Id.* at ¶ 25(a), (b), and (d). The Notification Letter cited the following information: the Psychologist’s conclusion that the Individual meets the DSM-5 criteria for Alcohol Use Disorder, Mild, in Partial Remission without adequate evidence of rehabilitation or reformation; the 2019 BAT results and the Individual’s admission that he was intoxicated the day of the BAT after drinking until after midnight the night before; his admission that he violated his employer’s eight-hour policy regarding alcohol consumption prior to work; and that the Individual was arrested for driving while intoxicated or under the influence three times between 1988 and 2001. Ex. 1 at 5. The above allegations justify the LSO’s invocation of Guideline G.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security

² The Individual submitted Exhibit G after the conclusion of the hearing.

³ The LSO’s exhibits were combined and submitted in a single, 253-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This decision will cite to the LSO’s exhibits by reference to the exhibit number and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

During his psychological evaluation, the Individual stated that he had been referred to alcohol treatment in 2019. Ex. 10 at 46. That treatment program was a six-week Intensive Outpatient Treatment Program (IOP), which he successfully completed that same year. *Id.*; Ex. A. He noted that, in the past, he had habitually abused alcohol. *Id.* at 48. He also stated that his last drink of alcohol occurred in September 2019. *Id.* at 47. He stated that he had no intention of consuming alcohol in the future. *Id.* at 48. He submitted to testing for alcohol consumption during the psychological evaluation, including a Phosphatidylethanol (PEth) test, and the test results were negative for alcohol consumption. *Id.* at 47-48. The Psychologist opined in the report that the negative test results corroborated the Individual’s statements that he had not been drinking alcohol during the weeks prior to the evaluation. *Id.* at 47. However, the Psychologist noted that the Individual had not yet begun an aftercare recovery program (“Recovery Program”) subsequent to his IOP and that the Individual’s apparent “comfort” with alcohol use placed him at risk for relapse without proper follow-up care. *Id.* at 48. At the conclusion of her report, the Psychologist opined that the Individual could demonstrate evidence of rehabilitation or reformation if he abstained from alcohol for at least one year, attended Alcoholics Anonymous or a similar evidence-based recovery program three times a week for a year, and found a sponsor. *Id.* at 48. The Psychologist further recommended that the Individual participate in random alcohol testing at least three times throughout the year of abstinence, including at least two PEth tests. *Id.* at 48.

The record includes an IOP certificate of completion dated December 2020, Ex. A, and negative PEth test results for eleven tests conducted about a month apart from June 2020 through May 2021. Ex. E; Ex. G.

At the hearing, the Individual’s wife, work colleague, church friend, and Recovery Program sponsor (“Sponsor”) testified on his behalf. All testified to the significant positive changes they had observed in the Individual since he began treatment. *See, e.g.*, Tr. at 19-23, 27, 38-40, 50-54, 67-68. The Sponsor described in detail the progress the Individual had made, and is continuing to

make, in the Recovery Program and the significant effort, discipline, and reflection that progress entails given the demanding nature of the program. *Id.* at 47-50, 52-54, 58-59. The Individual's wife testified that the counseling helped open the Individual's eyes to his destructive relationship with alcohol. *Id.* at 18.

The Individual testified that he successfully completed the IOP. *Id.* at 74. He testified that the IOP was very effective and caused him to understand that he still had a problem with alcohol despite long periods of avoiding alcohol-related issues such as arrests. *Id.* at 76-77. He reaffirmed his intent to abstain from alcohol indefinitely,⁴ and he testified that he had been abstinent since his 2019 BAT. *Id.* at 93, 97.

He also testified that, after graduating from the IOP, he began seeing a counselor for monthly, individual counseling. *Id.* at 79. He credited his monthly counseling with helping him make an enduring change. *Id.* at 79. He stated that the counselor suggested the Recovery Program that he currently attends. *Id.* at 80. He likes how the program builds upon his faith, which is very important to him. *Id.* at 82. He confirmed the testimony of the Sponsor regarding his efforts in the Recovery Program, and he testified that he has a network of individuals in addition to his wife and Sponsor who support his recovery.⁵ *Id.* at 82-83, 86-87. He also testified that he recently transferred his counseling treatment to a counselor ("second counselor") who initially treated him during the IOP. *Id.* at 87.

The last two witnesses to testify at the hearing were the second counselor and the Psychologist. The second counselor testified that the Individual has made identifiable and quantifiable progress since the IOP. *Id.* at 124. He opined that, if the Individual continues with the current treatment plan, the Individual's probability of relapse is low. *Id.* at 125.

The Psychologist testified after observing the hearing testimony. She stated that she originally diagnosed the Individual's disorder to be in Partial Remission because of the length of his reported abstinence at the time of the evaluation. *Id.* at 133. She testified that the witness testimony and the submitted alcohol test results in the record indicate that the Individual's efforts since her evaluation had exceeded her recommendations. *Id.* at 133-34. She then opined that the Individual's Alcohol Use Disorder is presently in Sustained Remission given the length of time he has remained abstinent. *Id.* at 134. She further approved of the treatment he was continuing to receive and testified that, so long as he continues to participate in the Recovery Group and counseling, his prognosis is very good. *Id.* at 135-136.

V. ANALYSIS

A. Guideline G Considerations

The following relevant mitigating condition can apply to resolve security concerns related to alcohol use:

⁴ His expressed intent to abstain was corroborate by several witnesses. *See* Tr. at 28, 58, 69.

⁵ The record includes an attendance sheet that indicates that the Individual has attended the Recovery Program regularly since May 2020. Ex. C.

- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

....

Adjudicative Guidelines at ¶ 23.

I find that the Individual has brought forth sufficient evidence to resolve the Guideline G concern under the mitigating condition set forth in ¶ 23(b). There is no doubt the Individual acknowledged his pattern of maladaptive alcohol use to his wife, his sponsor, his counselors, and at the hearing. Furthermore, he has taken significant action to overcome the problem by successfully completing the IOP, continuing to engage in monthly counseling, and participating in the rigorous Recovery Program. Further still, the alcohol test results in the record provide clinical evidence to support the witness testimony regarding the Individual's consistent and continued abstinence. Finally, all of his actions have been consistent with or exceeded treatment recommendation, and both the Psychologist and second counselor gave the Individual a positive prognosis. Accordingly, I find that the Individual has successfully resolved the Guideline G security concern.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised a security concern under Guidelines G of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concern set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should be restored.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals